B. REMARKS

This Amendment is submitted in response to the Examiner's Office Action dated July 5, 2007. Reconsideration of the application, as presently amended, is respectfully requested. Claims 1 through 25 were originally filed in this application. Claims 1 through 10, 12 through 16, 18 and 20 through 22 were previously cancelled without prejudice. Applicant reserves the right to further present these claims in an application deriving priority from this application, including a divisional or continuation application. Claims 17, 19 and 23 have been amended herein for clarity purposes and not for any reason related to the statutory requirements for patentability. Accordingly, Claims 11, 17, 19 and 23 through 25 are currently pending.

Favorable reconsideration of this application is respectfully requested for the reasons set forth in these remarks.

1. Claim Rejections – Claims 11, 17, 19, 23 and 24 under 35 U.S.C. § 103(a)

Claims 11, 17, 19, 23 and 24 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Cramer* (U.S. Patent No. 6,920,579) in view of *Wang* (U.S. Patent No. 6,587,970) in view of *Cowan* (U.S. Patent No. 6,115,743). Applicant respectfully requests reconsideration of this rejection for the following reasons.

Claim 11

MPEP § 2143.03 states that to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested in the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). Applicant respectfully submits that at least two claim limitations have not been disclosed in the prior art.

A. *Cramer* does not disclose either a fail-over or a switch-back for a single application in the absence of a failure of the entire server

Claim 11 includes the limitation "a graphical user interface, in communications with said monitoring and management server module, capable of allowing a user to a perform a failure switch-over from said primary computing environment to said secondary computing

environment for said application in a single action, and wherein said graphical user interface is further capable of allowing a user to perform a switch-back from said secondary computing environment to said primary computing environment for said application in a single action . . . ."

Cramer discloses a system whereby one server takes over the operation of another. *See Cramer*, Abstract ("The invention is a method for operating a file server system in a cluster mode that provides a relatively rapid and reliable takeover of one file server by another."); col. 3, lines 40-41 ("With the first filer out of service, file service requests are rerouted to the partner."). There is simply no provision in *Cramer* for the switch-over of a single application from one file server to another and none of the prior art cited teaches or even suggests such a possibility.

At the very minimum, *Cramer* is non-analogous art to the present invention because it teaches a system whereby one server fails and then another server takes over its operation in contrast to the present invention in which fail-over and switchback can be performed for a single application. The requirements and techniques for the fail-over and switch-back of an entire server such as those described in *Cramer* (wherein all data is rerouted from one address to another upon the failure of a server) are completely unrelated to the requirements and techniques for fail-over and switch-back for a single application (wherein a specific application is configured to allow failover upon a single click when, for example, maintenance is scheduled or other events occur which may not be the result of server failure). In *Cramer*, one server fails and file service requests are rerouted to a partner. However, the Applicant claims a process in which the server may still be functional but the fail-over occurs for a single application upon the occurrence of a single action.

When making a determination of obviousness, it is only relevant to consider references that are analogous to the claimed invention. *See In re Wood*, 599 F.2d 1032, 1036, 202 U.S.P.Q.

171 (C.C.P.A. 1979). If the scope of any particular reference is too remote to that of the claimed invention, that reference will not be used as prior art because it is nonanalogous to the claimed invention. *See, e.g., In re Clay*, 966 F.2d 656, 658, 23 U.S.P.Q. 1058 (Fed. Cir. 1992). Because one server fails in *Cramer* before another takes over, the fail-over and switch-back process in *Cramer* does not have the same purpose (i.e. fail-over and switch-back on a functional server) or relate to the same problem (i.e. application specific fail-over) as Applicant's invention and *Cramer* cannot therefore be considered analogous art.

In fact, *Cramer* actually teaches away from the present invention. While the Applicant claims fail-over and switch-back for a single application, *Cramer* teaches a process whereby a system operator wants to take over the file server operations for any reason, the operator "can initiate takeover by a command issued to the filer to shut down." *Cramer*, col. 2, line 59 to col. 3, line 23. The fail-over process taught by *Cramer* is incompatible with the fail-over process claimed by the Applicant.

B. *Cramer* does not disclose switch-back in a single action

The Examiner asserts that *Cramer* discloses "wherein said graphical user interface is further capable of allowing a user to perform a switch-back from said secondary computing environment to said primary computing environment for said application in a single action" and cites *Cramer*, Figure 4, element 402 for the proposition that "the user has one step for initiating the switch-back operation." However, the switch-back operation in *Cramer* necessitates at least two steps. According to *Cramer*, the first filer is either rebooted (*Cramer*, col. 7, line 44) or, alternatively, a command is issued to initiate a graceful shut down (*Cramer*, col. 7, lines 45-58) which may eventually require the operator to issue a takeover command and to reserve disk

space (*Cramer*, col. 7, lines 59-65). It is only after all of these actions have occurred that the operator can issue a command to initiate switch-back. The Examiner has cited a single element in Figure 4 in support of his position that a single action is required to initiate switch-back. However, it is clear from *Cramer's* Detailed Description of the Preferred Embodiments that the operator will be required to take at least two steps (reboot the primary server and initiate the switch-back command) and may be required to take many more (issue a command for a graceful shutdown, issue a takeover command, reserve disk space, initiate the switch-back command).

The legal conclusion of obviousness must be supported by facts. *Graham v. John Deere & Co.*, 383 U.S. 1 (1966). A rejection based on § 103 clearly must rest on a factual basis and these facts must be interpreted without hindsight reconstruction of the invention from the prior art. *Goodyear Company v. Ray-O-Vac Company*, 321 U.S. 275, 279 (1944). It appears that the Examiner may be attempting to use a server-to-server fail-over process to construct Applicant's application-specific fail-over process.

MPEP § 2143.03 states that to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested in the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). Because at least the above described important limitations are not found in any cited prior art references, the Examiner has failed to prove a prima facie case of obviousness. Accordingly, withdrawal of the rejection of Claim 11 is respectfully requested

Claim 17

Claim 17 reads as follows:

> 17. A method for providing a user with an application monitoring and disaster recovery management tool, comprising the steps of:
>
> deploying a first plurality of intelligent agents within a primary computing environment, said primary computing environment including a primary server

executing an application, and wherein each of said first plurality of intelligent agents monitors a metric related to said application;

monitoring, by a monitoring and management server module executing on a management server, a plurality of states of said application, each of said plurality of states being rendered by one of said first plurality of intelligent agents, wherein said management server is in communication with said primary computing environment and a secondary computing environment;

displaying to a user, via a graphical user interface in communications with said monitoring and management server module, said plurality of states; and

performing a failure switch-over of said application from said primary computing environment to a secondary computing environment having a secondary server capable of executing said application in response to a first input received from said user via said graphical interface, wherein said first input is received by said monitoring and management server module as a result of a button click by the user on said graphical user interface;

whereby said method allows for disaster recovery and fault tolerance, and limits computing down-time experienced by end users of said primary computing environment

Once again, Applicant respectfully submits that all limitations included in Claim 17 have not been disclosed in the prior art. For example, as previously discussed, *Cramer* discloses a system whereby one server takes over the operation of another. *See Cramer*, Abstract ("The invention is a method for operating a file server system in a cluster mode that provides a relatively rapid and reliable takeover of one file server by another."); col. 3, lines 40-41 ("With the first filer out of service, file service requests are rerouted to the partner."). There is no provision in *Cramer* for the fail-over of a single application from one file server to another.

Claim 17 includes a limitation whereby a single application fails-over from a primary server to a secondary server. *Cramer* teaches a system whereby one server fails before another server takes over its operation in contrast to the present invention in which fail-over can be performed for a single application. The requirements and techniques for the fail-over of an entire server such as those described in *Cramer* are completely unrelated to the requirements and techniques for fail-over for a single application. In *Cramer*, one server fails and file service

requests are rerouted to a partner. However, the Applicant a process in which the server may still be functional but the fail-over occurs for a single application upon the occurrence of a single action.

When making a determination of obviousness, it is only relevant to consider references that are analogous to the claimed invention. *See In re Wood*, 599 F.2d 1032, 1036, 202 U.S.P.Q. 171 (C.C.P.A. 1979). If the scope of any particular reference is too remote to that of the claimed invention, that reference will not be used as prior art because it is nonanalogous to the claimed invention. *See, e.g., In re Clay*, 966 F.2d 656, 658, 23 U.S.P.Q. 1058 (Fed. Cir. 1992). Because one server fails in *Cramer* before another takes over, the fail-over process in *Cramer* does not have the same purpose (i.e. fail-over from a non-functional server to a functional server) or relate to the same problem (i.e. fail-over of a specific application) as Applicant's invention and *Cramer* cannot therefore be considered analogous art.

Because important limitations are not found in any cited prior art references, the Examiner has failed to prove a prima facie case of obviousness. Applicant respectfully requests, therefore, that this rejection be withdrawn.

Claim 19, 23, and 24

Claims 19, 23 and 24 each contain similar limitations as described above, namely the fail-over and/or switch-back of a single application. Nothing in *Cramer* or *Wang* suggests or teaches the failover of a single application and, for the reasons set forth above, Applicant requests the claims, as presently presented, are in condition for allowance.

2. Claim Rejections – Claim 25 under 35 U.S.C. § 103(a)

Claim 25 is rejected under 35 U.S.C. 103 as being unpatentable over *Cramer* (US 6,920,579) in view of *Wang* (US 6,587,970) in view of *Cowan* (US 6,115,743) in further view of *Sekizawa* (2002/0138612).

Because Claim 25 depends from Claim 23, the Applicant respectfully asserts that the this claim is in condition for allowance for the reasons set forth above.

C. CONCLUSION

In view of the foregoing remarks, the Applicant respectfully submits that all pending claims are allowable and respectfully requests a timely Notice of Allowance. If the Examiner does not believe that the pending claims are in a condition for allowance, Applicant respectfully requests that the Examiner contact Applicant's attorney to arrange an interview before the Examiner issues another Office Action.

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